

Frasier, Frasier & Hickman, L.L.P

## Practice Overview

Workers' Compensation Guide

(En Español)

2007 - 2008

Workers' Compensation  
Guide

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## INDEX

- 2 About Frasier, Frasier & Hickman, LLP
- 2 Union Privilege Legal Service
- 3 Introduction
- 3 If You Are Injured
- 3 Notification
- 3 Treatment
- 3 File a Form 3
- 3 File the Form 3 on Time
- 4 In the Event of Termination of Employment
- 4 After Your Claim is Filed
- 4 Ensure Your Rights Are Protected
- 4 Benefits
- 5 Your Rights
- 5 Settlement
- 6 Common Types of WorkRelated Injuries



6 American With Disabilities Act

6 Drug Testing

### **ABOUT FRASIER, FRASIER & HICKMAN, LLP**

Frasier, Frasier & Hickman, LLP was founded over 50 years ago to represent working people of Oklahoma before all courts in this State. In that pursuit, we have found organized labor to be our friend and ally in the many battles fought over the years at the State Legislature and with State and Federal government bureaucrats.

We oppose antiunion interests wherever and whenever they surface.

In addressing working people's legal needs, our goal is to provide them with the best service available anywhere.

If you have questions about onthejob injury or any legal matter, please call the offices of Frasier, Frasier & Hickman, LLP at (918) 5844724 or tollfree at (1800) 522-4049.

Visit the  
Frasierlaw Consumer Center  
On the Internet, at  
[www.frasierlaw.com](http://www.frasierlaw.com)

### **UNION PLUS LEGAL SERVICE**

Frasier, Frasier & Hickman, LLP is pleased to be a participating firm in the AFL-CIO's Union Plus Legal Service. We are especially proud to have been rated one of the top participating firms in this special program.

Union Plus Legal Service is offered to members of participating AFL-CIO unions, their spouses and dependants.

The program offers many free services, including consultation, document review and followup services, such as writing letters and phone calls.

For more complex legal matters, Frasier, Frasier & Hickman, LLP will charge only 70 percent of its normal hourly fees. Contingency fees are not subject to the price reduction plan since clients pay nothing if nothing is collected. Frasier, Frasier & Hickman, LLP provides a wide array of legal services to union members, including workers' compensation, personal injury, general civil, criminal and domestic relations.

### **INTRODUCTION**

Every year brings changes to the laws which affect the work place. Unfortunately, these changes often complicate the ability of working people to be justly compensated for injuries received at work.

This information is designed to help union members obtain the greatest compensation possible after an injury occurs on the job.

Please read this information carefully. It is a step by step guide to the Oklahoma Workers' Compensation system. It is designed for you to carry on the job.

This is general information, because no two claims are alike. If you have been injured on the job, you should contact Frasier, Frasier & Hickman, LLP to receive more specific information.

The attorneys at Frasier, Frasier & Hickman, LLP are glad to talk with workers to ensure that they receive full benefits. We do not charge for an initial consultation. And we do not charge for Workers' Compensation services unless money is collected on your behalf.

### **IF YOU ARE INJURED**

If you are injured at work, or your job has aggravated an existing medical problem, take the following 3 steps at once!

1. Notify your supervisor and your union representative of any injury, and file an accident report claiming injury on duty.
2. Request any needed medical treatment.
3. Contact your attorney to file a Form 3 with the Workers' Compensation Court.

### **NOTIFICATION**

Now more than before, if you fail to notify your employer of a work related injury, you may lose your claim! In Oklahoma, all injured employees must provide actual notice to their employer within three (3) days of the accident.

Actual notice consists of an acknowledgement by the employer that you are hurt on the job. In other words, an injured worker must give oral or written notice of the injury in order to get treatment. Written notice is preferable.

Previously, an injured worker could meet the requirement by receiving "medical attention" from a "licensed physician" within 30 days. However, this is no longer the case and you must inform your employer of the injury and the employer will provide you with medical treatment.

**It is important that you keep a copy of written notice of injuries given to your employer for your records. In addition, it is now more important than ever to keep copies of all forms that you sign.**

### **TREATMENT**

The employer must promptly provide an injured employee such medical, surgical or other treatment as is necessary after an injury. The company may now choose the doctor who must provide you a report of your injuries within seven (7) days after he sees you. At the conclusion of his treatment, this doctor shall provide a final report to you as well.

If you are capable of returning to work on "light duty", the doctor is to let the company and you know immediately. It is important that you abide by this advice and return to work.

The employer's physician has the right to examine you and, until you petition the Workers' Compensation Court, has the sole right to treat you. If your employer fails to provide you any treatment within three days of receiving actual knowledge of the injury, you can choose your own physician.

Although the employer has the right to select your doctor, by hiring an attorney you may be able to change to your own doctor. Although the free choice of doctor that used to exist under the law is gone, by hiring a lawyer in many instances you can still maintain control over your choice of doctor.

Under the Workers' Compensation law, the employer has the right to have a nurse case manager involved in your case. The extent to which he or she can participate in your case is not clear. However, you should always remember that this nurse manager works for the employer, not you, and despite her honey tongue does not have your best interests at heart. You should not let the nurse manager talk to your doctor, even if it is the company doctor, nor be in the examination room when you meet with your doctor.

### **FILE A FORM 3**

Your Workers' Compensation rights are not enforceable unless you file a Form 3.

We recommend you have an attorney experienced in Workers' Compensation law assist you in filing your Form 3. Medical treatment and weekly benefits could be stopped without any notice to you, if a Form 3 is not filed properly. You cannot choose your own doctor to treat you unless you file a Form 3.

### **FILE THE FORM 3 ON TIME**

Your Form 3 must be filed within the prescribed time limit:

- Within two (2) years of the date of accident or last hazardous exposure; or,
- Within two (2) years from the date of the last payment of weekly Temporary Total Disability benefits; or,
- Within two (2) years from the last date of medical treatment. Payment of bills under group health insurance or benefits under sickness and accident plans other than Workers' Compensation do not count.; or,
- Within six (6) months if terminated or laid off.

There are no good reasons to put off filing your claim. It should be done in a prompt manner. See an attorney even if you did not file your claim within the twoyear period. Sometimes he can still help.

You may come by the offices of Frasier, Frasier & Hickman, LLP, located in Tulsa at 1700 Southwest Blvd., and we will file a Form 3 for you.

### **IN THE EVENT OF TERMINATION OF EMPLOYMENT**

If you have ceased employment and suffer from a cumulative trauma type of injury, such as carpal tunnel syndrome or hearing loss, you must provide your former employer with a notice of your injury within 90 days of your last workday. If it was a single event injury, the time limit is 30 days. Otherwise, the courts may presume your injury was not caused due to your employment. In either event, your Form 3 must be filed within six (6) months of your date of separation, or your claim will be denied. If there is a question about this, consult an attorney experienced in Workers' Compensation law.

### **AFTER YOUR CLAIM IS FILED**

Please do not discuss your case with anyone except your attorney and your union representative so the union may help monitor your case.

We suggest that you not sign anything without first consulting an experienced Workers' Compensation attorney.

If you have been receiving medical treatment, your attorney will request your medical records. After your attorney reviews these records, you may be sent to another physician for a second evaluation. However, each case is different and is treated individually.

## **ENSURE YOUR RIGHTS ARE PROTECTED**

Support your union! Your union promotes safety in the work place. Unsafe working conditions are the greatest cause of injury to working people.

Your union can give you the power at the bargaining table to demand safety, but your help and input are needed.

## **BENEFITS**

### **1. Temporary Total Disability (TTD)**

While off work and under a doctor's care or in need of a doctor's care, you may receive weekly benefits known as Temporary Total Disability or TTD. The maximum weekly benefit under TTD is 70 percent of your average weekly wage up to \$577, depending on the date of your accident. Payments are allowed for up to 52 weeks. At the end of 42 weeks, a claimant may apply for an additional 52 weeks. The extensions cannot exceed 156 weeks without further order of the Court. In some instances, your benefits may be limited to only eight (8) weeks with a possible 16week extension.

TTD benefits are not paid for the first three days off work. If you are off work for more than three days, your benefits should begin on the fourth day. In some circumstances, you may also be eligible to receive TTD benefits while undergoing vocational rehabilitation or job retraining.

You should not be fired while you are receiving TTD benefits because you are off the job.

If you do not have a Form 3 on file with the Workers' Compensation Court, the employer's insurance company can stop your benefits at any time. In most instances, once your Form 3 is on file, it takes a court order, or agreement of the parties, to terminate your benefits, absent a statutory limitation to the contrary.

### **Specific Rules Relating to Firefighters**

Firefighters, in some municipalities, may be entitled to their full wages in lieu of TTD for a time period specified in the CBA. It is important that you exercise your rights to these benefits by coordinating your representation between your attorney and your union representative.

### **2. Permanent Partial Disability**

If you still are disabled after your doctor has done all he can do, you are entitled to benefits up to a maximum of 100 percent disability. The amount of your benefit depends on the level of your disability and the amount of the wages you were earning at the time of your injury. The maximum rates for PPD in 2007 are set at \$289 per week.

### **3. Permanent Total Disability**

If you are 100 percent disabled, or your level of disability is less than 100 percent but you still are unable to return to work because of your lack of education or training, you could be entitled to a weekly benefit of up to \$577 to be paid indefinitely, or while you are retraining for another occupation.

### **4. Medical Treatment**

The company has the right to send you to its doctor for initial treatment. This doctor is chosen by the company and will provide you care and treatment and may send you back to work. It is important that you file a Form 3 and provide the employer actual notice so that you get this treatment. With the help of your lawyer, this doctor may be changed. If the company fails to get you treatment within three (3) days of actual notice of your injury, you will be able to pick your own doctor. The cost of your medical care is paid in full by your employer or its insurance company.

### **5. Vocational Rehabilitation**

If you cannot return to the work you were doing at the time of the injury, you could be awarded vocational rehabilitation benefits for up to two (2) years, to enable you to learn the skills required to perform another job.

### **6. Travel Expense**

If you reside some distance from medical facilities, you usually will be paid per mile for your travel. If your employer or its insurance company fails to pay you within 25 days of it being submitted to them, they may have to pay an additional fine.

### **7. Disfigurement**

Payment of up to \$50,000 can be awarded for scarring or disfigurement.



## **8. Prosthetic Devices**

Prosthetic devices such as artificial limbs, glasses or hearing aids may be furnished to you for the rest of your life at the employer's expense.

## **9. Death Benefits**

If a worker dies as a result of onthejob injury, the spouse is entitled to a \$100,000 lump sum, plus weekly payments. Children under age 18 may share up to a \$50,000 lump sum plus weekly benefits. These benefits may continue past the age of 18, in cases where children are in school, or are handicapped and unable to support themselves.

## **YOUR RIGHTS**

### **1. You may be treated by a doctor.**

You must first provide your employer actual notice of an injury. After that, you have the right to treatment with the company's doctor who must provide you a report. Only after that may you try to change your physician with the help of an attorney. Industrial clinics and doctors bid for your company's business the least care at the lowest price.

Exercising your right to be treated by a decent doctor is going to be harder than ever. Call Frasier, Frasier & Hickman, LLP if you need help choosing a doctor to treat you.

### **2. You may file a Workers' Comp claim without being fired.**

Oklahoma law does not allow employers to fire workers for filing a claim or for hiring a lawyer to represent them in the Workers' Compensation Court. For your protection, it is very important that your claim is on file. If you are fired because you filed a Form 3, you may be entitled to receive back pay and punitive damages.

### **3. You need not release information to your employer.**

Although you will have to be treated by the company doctor, do not sign any medical authorizations so that its doctor cannot discuss your medical treatment outside of your presence with your employer. Do not sign any medical authorizations or other documents without first consulting with your attorney. You are going to need to get an attorney in order to get to a doctor of your choice.

With changes in the law, your employer may now use what is commonly called a "case manager". They may try to accompany you to medical evaluations or treatment. This is often done under the guise of "helping you understand" what the doctor is doing, etc. In the past an injured employee could refuse this; however, now it is part of the law and if there is a nurse case manager, they will oversee your medical treatment. But there is no requirement that you allow them into the examination room or allow them to talk to the doctor.

**Remember that your employer is not required to tell you about your rights.**

## **SETTLEMENT**

Often an employer will offer an injured worker a settlement based on the level of impairment the company's doctor feels the worker suffered. This is usually not a fair deal for the worker for two reasons:

1. The type of settlement offered. Almost always, any offer made to you by the employer will be for what is called a Joint Petition settlement. A Joint Petition settlement gives your money to you in a lump sum, but it terminates any future rights that you may exercise against your employer for the injury. For instance: if an injury gets worse, the injured worker will not be able to seek additional temporary or permanent disability benefits and the cost of any medical treatment will come out of the injured worker's pocket. Also, any right to vocational rehabilitation is terminated. On the other hand, if an injured worker proceeds to trial, all future rights are preserved if the worker later has more problems resulting from this injury.

A Joint Petition settlement is almost never a good deal for a worker, unless other extenuating circumstances exist.

2. The employer's doctor has determined the level of impairment.

A rating of permanent disability is just one doctor's opinion of how this injury has affected you. There are guidelines that doctors must follow in rating disability. But if the doctor works for the company, he will tend to minimize your injury in any way possible. In other words, you probably will not get all the compensation to which you are entitled.

Remember, you are entitled to a second opinion.

There are several other ways to conclude your claim without waiving your future rights, other than settlement. It is to your advantage not to settle your claim with the company without first consulting with a competent Workers' Compensation attorney.

If you receive a settlement offer and are not represented by an experienced Workers' Compensation attorney, Frasier, Frasier & Hickman, LLP will be glad to review the offer for you, at no cost to you.

## COMMON TYPES OF WORKRELATED INJURIES

### 1. Accidents

Sudden injuries such as cuts, strains, sprains, broken bones, and burns.

### 2. Heart Attacks and Strokes

Benefits are available for these injuries if your doctor believes that they are the result of onthejob stress or strain. These injuries require technical medical proof in court and frequently must be pursued through the appeals courts before benefits are received.

### 3. Cumulative Trauma

Injuries sometimes occur gradually over a long period of time. Some examples: hearing loss, loss of breathing capacity and carpal tunnel syndrome. It is important not to overlook any problem with soreness in a joint or soreness in the back or neck which gradually may become severe after prolonged exposure to repetitive job duties.

### 4. Skin Disorders and Rashes

Repeated exposure to chemicals, smoke and other products of the work place may cause skin disorders. These injuries are compensable under the Workers' Compensation Act.

This list is not complete. Any injury you suffer on the job because of your work is probably covered, no matter how bizarre the injury or who was at fault.

### 5. Presumptive Diseases and Firefighters

The Legislature of the State of Oklahoma has created special presumptions in favor of firefighters. It provides: "Any member of the fire department ... who is disabled as a result of heart disease, respiratory system, cancer, or infectious disease which was not revealed by the physical examination passed by the member upon entry into the department shall be presumed to have sustained (the problem) while performing the firefighter's duties ... unless the contrary is show by competent evidence." Therefore, if you pass the physical upon entry into the department, the laws of this state create a presumption that your problem is workrelated unless it can be shown to be caused elsewhere.

**If you do not know whether you have a compensable injury, an attorney from Frasier, Frasier & Hickman, LLP will be happy to talk to you free of charge so that your rights can be protected.**

## AMERICANS WITH DISABILITIES ACT

The federal government prohibits discrimination on the basis of handicap. The Workers' Compensation Act and the American With Disabilities Act (ADA) work together to keep you from being fired while you are on Temporary Total Disability (TTD) and then to put you back to work once your TTD period ends. There are two main relationships between the ADA and Workers' Compensation.

**First, the ADA makes it illegal for an employer to ask on a job application or in an interview if you have ever been injured, filed a Workers' Compensation claim or have a disability.**

However, an employer may ask if you can perform specific tasks which are related to the job which you are seeking, such as, "Can you lift 50 pounds?" But they cannot ask if you have been injured or have a disability. An employer cannot have you take a pre-employment physical until after you have been offered a job.

**Second, the ADA may require your employer to put you as an injured worker back on the job. If, as a result of your job-related injury, you have a significant disability and cannot go back to your old job, the employer generally is required to attempt to find you another job within the company, if there is a vacancy, or modify your old job to fit your limitations.**

The ADA also requires employers to make "reasonable accommodation" if you have a significant disability. In other words, the employer may be required to restructure jobs, modify work schedules, reassign to vacant positions or make other changes to job duties so that you will be able to perform the job.

Any claim of a violation of the ADA should be filed with the Oklahoma Human Rights Commission within 180 days of the violation. You also should contact an attorney to make sure that you take the proper steps to enforce your rights.

## Drug Testing

The recent changes in Oklahoma's Workers' Compensation law allows for employers to drug test persons injured on the job. Post accident testing can occur whether or not there is reasonable suspicion that drugs played a part in the work related injury. If the accident results in "property damage" to things at work, someone with drugs or alcohol in his system may be responsible for repairs

to this equipment up to Five Hundred Dollars (\$500.00). Proof that drugs and alcohol are in the system, even though they may not be the cause of the injury, will result in the burden of proof shifting against the employee injured on the job. In other words, an injured worker must prove that the drugs or alcohol did not play a part in the incident causing the injury.

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